
**BZA-1932
KEENE HOMES, INC.
Flood Plain Setback Variance**

**STAFF REPORT
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REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner, with consent of owners Troy and Tracy Brown, represented by attorney Daniel Teder, is requesting a variance to allow a 5' setback from the Flood Plain zone instead of the required 25' setback in order to construct a single-family home on a 2.64 acre parcel located immediately south of 4311 N 50 W (County Farm Road), Wabash 31 (E1/2) 24-4. (UZO 4-4-3b)

AREA ZONING PATTERNS:

The site in question was parcelized in 1993 (P93-77); at that time, parcelizations were permitted in the R1, Single-family Residential zoning district. Also at that time, there was no requirement to obtain a Flood Plain certification for a property with a creek or ditch running through it, unless there was Flood Plain zoning already present within the bounds of the parcelization. This parcel, like all surrounding property, was zoned R1. The Flood Plain zone that occupies the middle third of this parcel today was based on an FP certification completed earlier this month when an application for a LOMA (letter of map amendment) from the FIRM (flood insurance rate map) was submitted.

AREA LAND USE PATTERNS:

There are three houses to the north of the site in question; according to the Assessor's records, the houses were constructed in 2005, 1994, and 1901. Although all three of these parcels likely have similar areas of Flood Plain zoning as the tract in question, no certifications have been done for these tracts, and their zoning remains R1. Surrounding properties are farmed; Arbor Chase Subdivision and the Greentree development for seniors are located farther to the southeast and south. St. Andrew's United Methodist Church is farther to the north. To the east, Auburn Meadows, a proposed 222 lot single-family subdivision on 85 acres received conditional primary approval in July 2014.

The site in question is 2.64 acres (200' wide by 575' in length) and currently unimproved. There is a larger than usual right-of-way of 51.5' and a building setback from the edge of the County Farm Road right-of-way of 40'. The unnamed tributary that made the FP certification necessary, runs north/south roughly through the center of the parcel. With the 25' building setback from the FP boundary, the building envelope for this parcel is approximately 150' wide along its front setback and 50' deep at the greatest point, tapering to 35' deep at its narrowest point.

TRAFFIC AND TRANSPORTATION:

County Farm Road (CR 50 W) is classified as a secondary rural arterial by the adopted *County Thoroughfare Plan*.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

The site will be served by an onsite septic system and well.

STAFF COMMENTS:

In addition to the 25' building setback from the FP boundary, the UZO also requires that the lowest floor of a building constructed within 100' of the FP boundary must comply with the flood protection grade. This means if petitioner is planning on building a basement or crawlspace, the finished floor elevation of that basement or crawlspace is required to be 2' above the elevation of the Regulatory Flood Plain on site. If the house is constructed on a slab, the ground floor elevation must be certified to be 2' above the elevation of the FP.

Because there was no FP certification requirement at the time this parcel was created, the necessity for this variance is not a self-imposed situation in that regard. The UZO definition of "hardship" states that "self-imposed situations include...any result of land division requiring variance from the development standards of this ordinance in order to render that site buildable." At the time the parcelization was approved, it was believed no FP existed on site.

But now with the Flood Plain certified and delineated on the parcel, the question becomes, is the parcel buildable without varying the ordinance requirements? The answer is yes, there is sufficient area outside of the FP for a smaller house to be constructed meeting the 25' FP setback. A building envelope of 150' by 35' exists on site; this limits the area a house could be built and the size and shape of a house to be constructed. On a lot with these circumstances, a house could easily be designed that fits the site (for example, a house with a side-loaded garage). While this challenge can be considered a practical difficulty; it cannot be considered an ordinance-imposed hardship.

Regarding the ballot items:

1. The Area Plan Commission on May 20th determined that the variance requested **IS NOT** a use variance.

And it is staff's opinion that:

2. Granting this variance **WILL** be injurious to the public health, safety, and general welfare of the community. Future homeowners living here may find a 5' setback from the FP boundary insufficient to protect them from flooding.
3. Use and value of the area adjacent to the property included in the variance request **WILL NOT** be affected in a substantially adverse manner. There are existing houses neighboring this site that would likely be within this 25' setback if the FP was

certified on their parcels. A new house on this lot should not impact neighboring properties.

4. The terms of the zoning ordinance are being applied to a situation that **IS NOT** common to other properties in the same zoning district. It is an unusual situation in that petitioner finds itself caught between regulations. A parcel was approved without FP certification, but never built on, so that years later when FP certification is required, the presence of the FP causes practical difficulties when constructing a home onsite; however,
5. Strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance. A smaller house with a width of 35', or a house with the same square footage but a different configuration could be constructed and positioned on site to meet all setback requirements.

Note: Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS** self-imposed or solely based on a perceived reduction of or restriction on economic gain because a different house could be built on site.

5b. The variance sought **DOES NOT** provide only the minimum relief needed to alleviate the hardship because there is no hardship. The variance is only needed to allow the construction of a house with the size and shape petitioner desires.

STAFF RECOMMENDATION:

Denial